



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 13, 2006

**VIA FAX & 1<sup>ST</sup> CLASS MAIL**

Joseph E. Sandler, Esq.  
Neil Reiff, Esq.  
Sandler, Reiff & Young, P.C.  
50 E Street, SE  
Suite 300  
Washington, DC 20003

RE: MUR 5754  
MoveOn.org Voter Fund  
MoveOn PAC and Wesley Boyd, in  
his official capacity as Treasurer  
MoveOn.org

Dear Messrs Sandler and Reiff:

On December 8, 2006, the Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of your client, MoveOn.org Voter Fund, in settlement of violations of 2 U.S.C. §§ 433, 434, and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Further, after considering the circumstances of the matter, the Commission also determined on December 8, 2006 to take no further action with respect to MoveOn PAC and Wesley Boyd in his official capacity as Treasurer. On December 12, 2006, the Commission found no reason to believe that MoveOn.org Voter Fund violated the Federal Election Campaign Act of 1971, as amended, in connection with allegations of coordination with John Kerry for President, Inc. The dispositive Factual and Legal Analysis is attached for your information. Also on December 12, 2006, the Commission severed MoveOn.org from MUR 5440, transferred it to MUR 5754, and closed the file. Accordingly, the file has been closed in this matter with respect to all MoveOn entities.

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Documents related to the case will be placed on the public record within 30 days  
*See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed  
Reg 70,426 (Dec 18, 2003) Information derived in connection with any conciliation attempt  
will not become public without the written consent of the respondent and the Commission  
*See* 2 U S C § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files  
Please note that the civil penalty is due within 30 days of the conciliation agreement's effective  
date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "April J. Sands". The signature is fluid and cursive, with the first name "April" and last name "Sands" clearly distinguishable.

April J Sands  
Attorney

Enclosure  
Conciliation Agreement  
Factual & Legal Analysis

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In the Matter of )  
 ) MUR 5754  
MoveOn.org Voter Fund )

**This matter was generated by a complaint filed with the Federal Election Commission**

(“the Commission”). See 2 U.S.C. § 437g(a)(1). The Commission found “reason to believe” in accordance with 2 U.S.C. § 437g(a)(2) that MoveOn.org Voter Fund (hereinafter, “MOVF”) violated 2 U.S.C. §§ 433, 434, and 441a(f) of the Federal Election Campaign Act of 1971, as amended (“the Act”), by failing to register as a political committee with the Commission, by failing to disclose its contributions and expenditures, and by knowingly accepting contributions in amounts exceeding \$5,000 from individuals, and an investigation was conducted.

NOW, THEREFORE, the Commission and MOVF, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over MOVF and the subject matter of this proceeding

II      MOVF has had a reasonable opportunity to demonstrate that no action should be taken in this matter

III. MOVF enters voluntarily into this agreement with the Commission

IV. The pertinent facts in this matter are as follows:

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Applicable Law

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2           1.       The Act defines a political committee as “any committee, club,  
3       association, or other group of persons which receives contributions aggregating in excess of  
4       \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
5       during a calendar year ” 2 U.S.C. § 431(4)(A).

6           2.       The Act defines the term “contribution” as including “anything of value  
7       made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C.  
8       § 431(8)(A)(i); *see also, FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995)  
9       (where a statement in a solicitation “leaves no doubt that the funds contributed would be used to  
10      advocate [a candidate’s election or] defeat at the polls, not simply to criticize his policies during  
11      the election year,” proceeds from that solicitation are contributions).

12          3        The Act requires all political committees to register with the Commission  
13      and file a statement of organization within ten days of becoming a political committee, including  
14      the name, address, and type of committee; the name, address, relationship, and type of any  
15      connected organization or affiliated committee; the name, address, and position of the custodian  
16      of books and accounts of the committee; the name and address of the treasurer of the committee,  
17      and a listing of all banks, safety deposit boxes, or other depositories used by the committee. *See*  
18      2 U.S.C. § 433.

19          4.       Each treasurer of a political committee shall file periodic reports of the  
20      committee’s receipts and disbursements with the Commission. *See* 2 U.S.C. § 434(a)(1). In the  
21      case of committees that are not authorized committees of a candidate for Federal office, these  
22      reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting

1 period, *see* 2 U.S.C. § 434(b)(1); the total amounts of the committee's receipts for the reporting  
2 period and for the calendar year to date, *see* 2 U.S.C. § 434(b)(2); and the total amounts of the  
3 committee's disbursements for the reporting period and the calendar year to date. *See* 2 U.S.C.  
4 § 434(b)(4).

5           5. The Act states that no person shall make contributions to any political  
6 committee that, in the aggregate, exceed \$5,000 in any calendar year, with an exception for  
7 political committees established and maintained by a state or national political party. *See*  
8 2 U.S.C. § 441a(a)(1)(C). Further, the Act states that no political committee shall knowingly  
9 accept any contribution in violation of the limitations imposed under this section. *See* 2 U.S.C.  
10 § 441a(f).

11           6. Under certain circumstances, organizations established under I.R.C. § 527  
12 may not qualify as political committees. The disclosure reports generally required of such  
13 Section 527 organizations are different from those required of political committees in format,  
14 timing and level of detail. However, there is substantial overlap in the content of disclosures  
15 required of such Section 527 organizations and the disclosures required of political committees,  
16 though the Act has some additional disclosure requirements for political committees that are not  
17 required under the Internal Revenue Code. Unlike a political committee, a Section 527 may  
18 avoid disclosing certain receipts if it pays the highest corporate tax rate on such fund. In  
19 addition, an organization which does not trigger political committee status may accept  
20 contributions larger than \$5,000 and accept (for limited purposes) funds from corporate or union  
21 sources

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Factual Background

7. The MoveOn.org family of organizations includes: (1) MoveOn.org, an entity organized under Section 501(c)(4) of the Internal Revenue Code; (2) MoveOn PAC, a political committee registered with the Commission; and (3) MOVF, an entity organized under Section 527 of the Internal Revenue Code.

8. MOVF filed a Notice of 527 Status with the Internal Revenue Service ("IRS") on September 18, 2003 as a political organization under 26 U.S.C. § 527.

9. MOVF has not registered as a political committee with the Federal Election Commission.

10. MOVF accepted contributions from individuals in amounts exceeding \$5,000. During the 2004 election cycle, MOVF accepted aggregate contributions as large as \$2,505,014 from a single individual. During the 2004 election cycle, MOVF accepted approximately \$9.8 million in contributions in amounts exceeding \$5,000 per individual, including \$3,142,242 in 2003 and \$6,662,888 in 2004.

11. From November 5, 2003 to November 2, 2004, MOVF spent \$14.6 million for 25 television advertisements that were broadcast in the states of Pennsylvania, Florida, Maine, West Virginia, Minnesota, Iowa, Ohio, Colorado, Oregon, Nevada, Michigan, Missouri, Wisconsin, and on CNN. The advertisements opposed George W. Bush regarding his record on campaign issues and criticized his leadership.

12. The ads raised such issues as spending on the war in Iraq, prescription drugs, overtime pay, and job outsourcing -- each with the tag line, "George Bush He's not on our side." or "Face it George Bush is not on our side." Another common theme in the MOVF ads

1 was that George Bush was misleading the American people on issues from the Iraq war to  
2 financial security and Medicare. In many of these ads, the word "Leader" was superimposed on  
3 President Bush's picture and then the letters "M-I-S" appear to form the word "Misleader." In  
4 other ads, the tag line was "We're not being led. We're being misled." In a newspaper  
5 advertisement, bold headlines read "BIN LADIN DETERMINED TO STRIKE IN US." Beneath  
6 the headline read "President Bush received this warning five weeks before September 11, 2001.  
7 He did nothing. George Bush. A failure of leadership."

8 13. MOVF dedicated more than \$14.6 million of its \$21,346,380 in total  
9 disbursements reported to the IRS during the 2004 election cycle to the production costs and  
10 media expenses related to the advertisements described in paragraphs 11 and 12 above. During  
11 the entire 2004 election cycle, the only other disbursements made by MOVF were for  
12 fundraising, administrative expenses, and \$724,000 in grants to other political organizations.  
13 MOVF made no disbursements in connection with state or local elections during the 2004  
14 election cycle.

15 14. MOVF's solicitations were sent almost exclusively by email  
16 communication. Examples of fundraising messages in these solicitations include:

17 A. The three main themes on which MoveOn intended to  
18 focus were: "1) President Bush's Actions Can't Be  
19 Trusted;" "2) Bush's Actions Reflect a Lack of Concern  
20 for Working Families;" and "3) Bush's Actions and  
21 Record Show a Lack of Competence to Solve Our  
22 Nation's Problems." "If we pull this off, we won't just  
23 change the shape of this election - we may well change  
24 the way politics works."

25 B. "In their first ad for the 2004 election, [the GOP]  
26 implicitly accuse Democratic presidential candidates of  
27 'attacking the president for attacking terrorists.' The ad  
28 doesn't question opponents' ideas, it questions their

1 commitment to America. But there is nothing more un-  
2 American than attacking an adversary's patriotism for  
3 political gain."

4 "We won't let the Bush campaign get away with these  
5 kinds of attacks. And in the end, we'll take our country  
6 back."

7 "Can you help? With the Soros/Lewis match, a  
8 contribution of \$50 will actually bring in \$75. Multiply  
9 that by thousands of us, and we'll easily bring in enough  
10 money to take the Republicans on."

11 C. "Weeks of on-the-ground testing have shown that our '\$87  
12 Billion' TV ad successfully gets the truth out about  
13 President Bush and his policies. Our tests showed that an  
14 impressive 4% of viewers changed their positions to  
15 disfavor Bush after seeing the ad. Even experts who have  
16 been in this field for years were blown away."

17  
18 "So today, we're launching our first really big MoveOn.org  
19 Voter Fund ad buy. We're putting the '\$87 Billion' ad to  
20 work in several key swing states - putting up close to two  
21 million dollars to make sure that every TV viewer in these  
22 states sees the ad multiple times."

23 D. "On Tuesday, we sent out a survey asking you and other  
24 MoveOn contributors if you would support a multi-million  
25 dollar advertising campaign to expose the failure of  
26 President Bush's policies in key "battleground" states.  
27 The response was overwhelming. 98% of the people who  
28 responded urge us to take it up. Clearly, this is work that  
29 needs to be done."

30 "Please do what you can. If we can pull this off together,  
31 the political establishment may never be the same."

32 E. "Over the next months, we're going to raise an  
33 unprecedented \$10 million for the production and  
34 placement of ads that take the truth about the Bush  
35 administration directly to the American people in key  
36 battleground states."

37 "Every dollar that you donate today will be matched one-  
38 for-one - it's great bang for your buck. The sooner this

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money starts coming in, the sooner we can get those ads running – if we raise \$300,000 today, we can start running the ads in less than two weeks. Please help however you can – be it \$25 or \$2500.”

F. “Every cent of your ticket will go towards our \$10 million MoveOn.org Voter Fund advertising campaign that’s getting out the word about President Bush’s bad policies.”

“The Voter Fund will create and run powerful political ads in swing states to challenge President Bush’s policies and his administration.”

G. “The MisLeader campaign will be housed in, controlled by and administered through the MoveOn.org Voter Fund, a 527 organization. . . . A small group of progressive political consultants, activists and fundraisers have joined with the leadership of the MoveOn.org Voter Fund, a 527 organization, to carry out an early advertising campaign to unseat President George Bush.”

Finally, one solicitation contained the following descriptions of MOVF’s intentions.

H. “Our objective is to challenge George Bush’s policies and record in order to reduce support for his re-election in 2004. We will concentrate our resources in several states critical to his re-election. In those states, we will reduce his support among swing voters through an empirically driven advertising campaign.”

In the same solicitation, under the heading of “Tactics”:

I. “We will create powerful television advertising to implement this strategy. We will produce convincing anti-Bush TV spots and get them on the air in targeted states. We will buy enough airtime to effectively deliver our message to swing voters in those states. We will sustain our advertising presence continually throughout the pre-primary and primary periods.”

Similarly, in the same solicitation under “Targeting”

J “We have selected five states in which to launch this project. They are FL, OH, MO, WV, and NV. These are

1 five states Bush won by small margins in 2000. If results  
2 in 2004 mirror those in 2000, we can defeat Bush by  
3 turning only one of the three larger states (FL, OH, MO)  
4 or both of the two smaller ones (WV, NV).”

5  
6 15 The Commission concludes that contributions received in response to  
7 MOVF's solicitations that clearly indicated the funds received would be used to defeat George  
8 Bush in the 2004 general election caused MOVF to surpass the \$1,000 statutory threshold. *See*  
9 2 U.S.C. § 431(4)(A) MOVF received its first \$1,000 in contributions in November 2003, at the  
10 latest. MOVF received \$846,040 in response to an e-mail solicitation sent to prospective donors  
11 on November 21, 2003, the relevant text of which appears in Paragraph 14, subparagraphs G, H  
12 and J.

13 16. Since the 2004 election, MOVF has effectively ceased active operations  
14 It has added no new content to its website, no longer accepts contributions, and has limited its  
15 disbursements primarily to legal and administrative costs

16 17. MOVF contends that it made all of its fundraising communications with  
17 the good faith belief that they did not constitute solicitations for contributions under 2 U.S.C.  
18 § 431(8)(A)(i) and that its disbursements did not constitute expenditures under 2 U.S.C.  
19 § 431(9) Furthermore, MOVF contends that it operated under the good faith belief that it had  
20 not triggered political committee status in 2004, and that it fulfilled the applicable regulatory  
21 requirements via disclosure to the Internal Revenue Service of its overall receipts and  
22 disbursements, and timely disclosure to the Commission of its electioneering communications.

1  
2 V. In order to settle this matter and avoid the cost and time of further proceedings,  
3 and without admitting or denying each specific basis for the findings, for the purposes of  
4 settlement, MOVF no longer contests that

5 1. MOVF violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a  
6 political committee as of November 2003.

7 2. MOVF violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in  
8 amounts exceeding \$5,000 from individuals.

9 VI MOVF, its officers, principals, agents, representatives, successors, and assigns,  
10 will cease and desist from violating 2 U.S.C. §§ 433 and 434 by failing to register and report as a  
11 political committee. MOVF, its officers, principals, agents, representatives, successors, and  
12 assigns, will cease and desist from violating 2 U.S.C. § 441a(f) by accepting contributions in  
13 excess of the limits set forth in the Act. MOVF will provide an executed copy of this Agreement  
14 to each of its officers, principals, agents, representatives, successors, and assigns.

15 VII. MOVF will pay a civil penalty to the Federal Election Commission in the amount  
16 of One Hundred Fifty Thousand dollars (\$150,000), pursuant to 2 U.S.C. § 437g(a)(5)(A)

17 VIII. MOVF will file reports with the Commission containing all information required  
18 to be disclosed by federal political committees for its activities from September 18, 2003 until  
19 December 31, 2006. The Commission agrees that MOVF may fulfill this obligation by  
20 submitting copies of reports filed with the Internal Revenue Service for activities during this  
21 period, if supplemented with additional information required of federal political committees.

1 Such supplementation would include, but not be limited to, the information contained on the  
2 summary pages of reports filed by political committees.

3 IX MOVF agrees to register and report to the Commission as a political committee in  
4 the event that it receives additional contributions and/or makes expenditures for the purpose of  
5 influencing federal elections, and will comply with any and all applicable provisions of the Act  
6 and Commission regulations.

7 X. The Commission, on request of anyone filing a complaint under 2 U.S.C.  
8 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance  
9 with this agreement. If the Commission believes that this agreement or any requirement thereof  
10 has been violated, it may institute a civil action for relief in the United States District Court for  
11 the District of Columbia.

12 XI. This agreement shall become effective as of the date that all parties hereto have  
13 executed same and the Commission has approved the entire agreement.

14 XII. MOVF shall have no more than 30 days from the date this agreement becomes  
15 effective to comply with and implement the requirements contained in this agreement and to so  
16 notify the Commission.

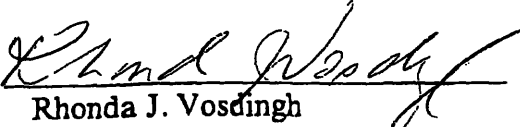
17 XIII This Conciliation Agreement constitutes the entire agreement between the parties  
18 on the matters raised herein, and no other statement, promise, or agreement, either written or  
19 oral, made by either party or by agents of either party, that is not contained in this written  
20 agreement shall be enforceable.

21

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY:

  
Rhonda J. Vosdingh  
Associate General Counsel  
for Enforcement

Date

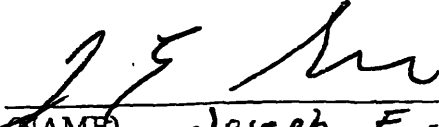
12/11/06

FOR MOVF:

(NAME)

(POSITION)

MoveOn.org Voter Fund

  
Joseph E. Sandler  
Counsel

Date

11/17/06

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